Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the Telecommunications	)	
Act of 1996	)	

COMMENTS OF AT&T CORP. IN OPPOSITION TO THE WRIGHT PETITION FOR RULEMAKING REGARDING ISSUES RELATED TO INMATE CALLING SERVICES

Pursuant to Section 1.4(b)(2) of the Commission's Rules, 47 C.F.R. § 1.4(b)(2), AT&T Corp. ("AT&T") hereby submits comments in opposition to the Petition for Rulemaking or, in the Alternative, Petition To Address Referral Issues In a Pending Rulemaking filed in the above-captioned proceeding ("Wright Petition").[1]

The Wright Petition was filed by various prison inmates who are presently incarcerated at three privately-administered prisons operated by the Corrections Corporation of America, including the Central Arizona Detention Center in Florence Arizona, the Torrence County Detention Facility in Estancia, New Mexico and the Northeast Ohio Correction Center in Youngstown, Ohio, as well as non-inmate

[1] *See* FCC Public Notice, DA 03-4027, rel. December 31, 2003. A summary of the Public Notice was published in the Federal Register on January 20, 2004. *See* 69 Fed. Reg. 2697-98. *In the Matter of Martha Wright, et al, Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues Pending Rulemaking, ("Wright Petition")* dated October 31, 2003.

petitioners ("Petitioners"). Specifically, the Petitioners are requesting that the Commission: (1) abolish the present system of exclusive service arrangements and permit open access to competition by multiple interexchange carriers; and (2) provide alternative calling options to collect calling by allowing debit card or debit account calling services. Petitioners argue that introducing theses changes to the inmate calling services will effectively provide more choices and ultimately result in lower rates for the families of prison inmates who pay for these calls.

As demonstrated below, the Commission should deny the relief requested in the Wright Petition. The Commission has long recognized that inmate calling services occupy a unique position under Section 276 and that, due to the legitimate security concerns inherent in dealing with prisoners, the Commission should defer to the judgment of correctional facility administrators with respect to the provision of inmate calling services. The federal courts have likewise deferred to the judgment of prison and jail administrators and upheld prison regulations related to inmate calling service if they are reasonably related to a legitimate penological interest. The Commission therefore should continue to defer decisions with respect to the appropriate telephone service arrangements and associated costs to the state and local authorities who are responsible for making and implementing policies to protect the public safety and maintain the security of the prison inmate population. And, where correctional facility administrators have determined that exclusive service arrangements best serve their security interests, the Commission should not, and may not, interfere with such existing private contracts.

1. The Commission Has Appropriately Deferred To Correctional Facility Authorities To Determine The Most Suitable Telephone Service Arrangements For Their Prison Inmate Population And Should Continue To Do So.

The Commission has consistently recognized that despite Section 276's classification of inmate calling services as a payphone service,[2] these services are, by their nature, quite different from the public payphone services that are accessible to the general public. Because correctional facility authorities are faced with the difficult and important task of maintaining the security of inmates, as well as the security of the public, the Commission has ruled time after time that those correctional facility authorities are owed the greatest deference to establish a telecommunications system within their prison systems that most enhances security.

In 1996, in response to complaints about allegedly high rates for inmate calls, the Commission released a Report and Order and requested comment on "the changes, if any, that should be made to the rules applicable to inmate-only telephones.[3] The Commission received comments from multiple parties, including from inmates who complained that they were restricted to collect calls and a single provider. After a thorough review and analysis, the Commission declined to make any changes "in view of the 'exceptional' circumstances presented by the correctional environment."[4] The

---

[2] 47 U.S.C. § 276(d) ("the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions.")

[3] *In the Matter of Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators,* Report and Order, CC Docket No. 94-158, 11 FCC Rcd. 4532 (rel. March 5, 1996) at 32.

[4] *Id.* at 33.

Commission agreed, however, to continue to monitor the industry in the context of its broader Operator Services Provider Reform Proceeding ("OSP Reform Proceeding").[5]

In connection with the OSP Reform Proceeding, the Commission received additional comments proposing that it initiate rules allowing recipients of inmate calls to select their preferred telephone provider, *i.e.*, "billed party preference."[6] The Commission again recognized that the prisons block access to multiple telephone providers and install and maintain other security measures "for legitimate security reasons."[7] It therefore tentatively declined to require billed party preference in the prison context.[8]

In 1998, the Commission once again addressed the inmate telephone industry in its ongoing OSP Reform Proceeding.[9] The Commission noted that the United States Attorney General, other federal officials and virtually every other party who submitted comments observed that, in light of the special security requirements applicable to inmate calls, it would be imprudent to allow recipients of inmate calls to select their preferred provider.[10]

---

[5] *Id.*

[6] *In the Matter of Billed Party Preference For Interlata 0+ Calls,* Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, 11 F.C.C. Rcd 7274 (rel. June 6, 1996), at 67-68.

[7] *Id.* at 68.

[8] *Id.*

[9] *In the Matter of Billed Party Preference For Interlata 0+ Calls,* Second Report and Order, CC Docket No. 92-77, at 104-106.

[10] *Id.* at 105.

On May 6, 1999, the Commission invited interested parties to comment and update the record on inmate telephone service issues in this proceeding.[11] In particular, the Commission sought comment on the compensation mechanism that should be applied to inmate telephone service providers, whether a national inmate payphone service provider compensation rate should be adopted, and whether compensation should be established for federal, state and local institutions. The Commission also sought up-to-date information regarding the costs to serve the inmate facilities and the level and nature of bad debt associated with inmate payphone service providers, including whether the use of debit cards would mitigate the level of bad debt associated with the inmate payphone industry, the specific factors that would prohibit the use of debit cards and if such factors exist in each correctional institution.[12]

More recently, in February 2002, the Commission issued a Notice of Proposed Rulemaking ("NPRM") to explore whether the current regulatory regime applicable to the provision of inmate calling services is responsive to the needs of correctional facilities, inmate calling service providers and inmates. The Commission sought comment on, *inter alia*, costs associated with the services, including location commissions, alternatives to collect calling and ways to reduce costs to inmates and their

[11] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Public Notice, CC Docket No. 96-128, 14 F.C.C. Rcd. 7085 (rel. May 6, 1999).

[12] *Id.*

families.[13] As part of this NPRM, the Commission has accepted the Wright Petition as an *ex parte* presentation because it addresses issues that are relevant to this proceeding.[14]

Thus, the Commission has repeatedly acknowledged the unique status of inmate calling services and appropriately determined that Section 276 does not require it to ignore or undermine the legitimate security considerations of correctional facilities administrators. The Commission should continue to do so. The Commission accordingly should continue to recognize that the provision of these services implicates important and legitimate penological interests, which – in the best judgment of prison and jail administrators – may preclude reliance on competitive choices. The Commission should thus defer to local and state correctional authorities with respect to the appropriate telephone service arrangements that can be offered at their respective penal institutions.

2. The Courts Have Consistently Held That Correctional Authorities May Determine The Nature Of Inmate Calling Services As Long As It Relates To A Legitimate Penological Interest.

The courts have consistently acknowledged the rights and responsibilities of prison and jail administrators to ensure the security of their facilities and have held that inmates have limited rights to telecommunications access, and that such access is "subject to rational limitations in the face of legitimate security interests of penal institutions." Washington v. Reno, 35 F.3d 1093, 1100 (6th Cir. 1994), and (*citing* Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986)). "The exact nature of

---

[13] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Order on Remand and Notice of Proposed Rulemaking, CC Docket No. 96-128, 17 F.C.C. Rcd. 3248 (rel. February 21, 2002).

[14] *See* 69 Fed. Reg. 2697-98.

telephone service to be provided to inmates is generally determined by prison administrators, subject to court scrutiny for unreasonable restrictions." Fillmore v. Ordonez, 829 F.Supp 1544, 1563-64 (D. Kan. 1993), *aff'd*, 17 F.3d 1436 (10th Cir. 1994).

Thus, courts have found that imposing a collect call system which required prisoners to make calls outside the area code as collect calls, Schwerdtfeger v. Lamarque, 2003 WL 22384765, at p. 14 (N.D. Cal.); or limiting the number of individuals on an inmate's telephone list, Arney v. Simmons, 26 F.Supp.2d 1288, 1290 (D. Kan. 1998); or replacing the prison's collect-call telephone system with a direct-dial telephone system, Washington, *supra;* or implementing a particular automated telephone system in order to monitor inmates telephone calls, Carter v. O'Sullivan, 924 F.Supp. 903 (C.D. Ill. 1996), all furthered legitimate security considerations, including reducing the opportunity to misuse the phone system through fraudulent schemes, form criminal conspiracies, and/or harass victims and court personnel.

In sum, the courts have held that prison officials may decide the exact nature of telephone services to be offered to its inmates so long as any restrictions are reasonably related to legitimate penological interests. Johnson v. California, 2000 WL 290244, *5 (9th Cir. March 21, 2000); *see also* Washington, *supra,* at 1100.

3. The Commission Should Not Impose Any Specific Requirements On Inmate Calling Services.

Petitioners argue that abolishing the present delivery system for providing inmate telephone services will provide more choices and result in lower rates for the families of inmates who pay for the calls. Their focus is misplaced.

The administrator of the correctional facility is the entity tasked with determining what type of inmate calling service best suits the particular needs of that facility. Thus, the prison or jail administrator can determine what service offering best protects the security of the facility given its unique inmate population, size, available administrative resources and public safety concerns. The administrator can also determine what type of calling arrangements benefit the inmate population at large or those who make the preponderance of telephone calls. For example, Roger Werholtz, writing on behalf of the Kansas Department of Corrections, indicated that inmate telephone services in Kansas currently "provides for inmate placed collect calls, direct billing to the call recipient, and prepaid calls" and that "direct billing and prepaid services were added to the existing services as a means of providing payment options for call recipients."[15] The important point is that this policy decision should be made by the administrator of the individual facility, who is aware of the specific needs of that facility and its population.

For example, certain jail or prison administrators may decide, based on their size, population and administrative resources that the facility is best served by providing access to multiple interexchange carriers. Other administrators may raise legitimate concerns that providing access to unlimited providers raises unduly risky accountability problems if the facility's security procedures are violated and/or unauthorized calls are mistakenly allowed to be placed. Those administrators may be concerned that if a breach in security occurs, they would be left with numerous telecommunications carriers all pointing their institutional fingers at each other. Given

[15] *See* Kansas Department of Corrections *Ex Parte*, dated February 4, 2004, at 1.

the threat to public safety, the administrator may understandably prefer to provide only one carrier access so if a problem does arise, it knows who is accountable and can quickly mandate appropriate remedial measures.

Similarly, certain administrators may decide that their inmate population is best served by allowing access to debit accounts. Others may, based on the make-up of their population, determine that the threat posed by debit accounts is too great. Debit accounts create the risk that one inmate could use threats to the physical safety of another inmate to coerce the second inmates' friends or family to deposit funds into the first inmate's account. The risk is greatly minimized by collect calls because the party the inmate calls is obligated to pay for the call. Debit accounts also threaten internal order at the correctional facility if disputes arise over the proper billing or debiting of inmates' accounts. With collect calls, individuals outside the prison population, not the inmates themselves, are responsible for handling any billing issues.

The Affidavit of Douglas A. Dawson filed in support of the Wright Petition ("Dawson Affidavit")[16] erroneously puts the blame for the perceived inadequacies of current inmate calling services on the communications provider who supplies the services. Yet, the decision regarding what type of calling services should be made available at a particular prison or jail appropriately rests with the administrator of each institution, and Petitioners' efforts should be directed there. They are in a far better position to balance the penological concerns against the concerns raised in the Wright Petition. If they are going to remain responsible for securing both inmate and public

[16] Affidavit of Douglas A. Dawson, dated October 29, 2003 ("Dawson Affidavit").

safety, they should be free to exercise their discretion in regard to telecommunication services that impact those security responsibilities.

Moreover, although the Wright Petition involves solely privately administered prison facilities, those private facilities are subject to the penological interests and regulations mandated by the states. For example, the Wright Petition challenges inmate calling services at private prison facilities operated by the Corrections Corporation of America. The Corrections Corporation of America operates a private facility in Oklahoma. Oklahoma has expressly required private facilities operating within its state to adhere to its regulations on inmate calling. Oklahoma has authorized its Department of Corrections ("DOC") to oversee private prison contractors and, pursuant to this authority, the Oklahoma DOC has established rules and regulations that limit the calling services available to inmates at private prisons. 57 Okla. Stat. §§ 561, 563.3; DOC Policy, OP-030401, Private Prison Monitoring Requirements; OP-030119, Inmate Telephone Privileges, at I.A. (limiting inmate phone access to collect calls, and prohibiting inmates from making credit card and "third number billing" calls and making or participating in conference calls, transferred calls, three-way calling, or call forwarding). Pursuant to that same authority, the Oklahoma legislature has also mandated that private prison contractors obtain approval of the "internal security of the[ir] facility" from the Oklahoma DOC, and that the DOC monitor the "communications services" offered by prisons (including private prisons). 57 Okla. Stat. 563.3; DOC Policy, OP-030401 at IV.A.1.a (12).

The bottom line is that decisions regarding inmate calling services should be left to the local and state correctional authorities that are in the best position to

understand the types of services that can be offered without compromising security and public safety and that are actively regulating prison phone service. The Commission should neither propose or adopt any specific requirements with respect to the inmate calling services offered nor prohibit any particular payment method.

4. The Commission Should Respect Correctional Authorities Choice Of Exclusive Service Arrangements And Should Not Interfere With Private Contracts.

As demonstrated above, the appropriate correctional authority is in the best position to decide whether reliance on a single provider is essential to design, development, install and support a complex network that gives the correctional facility the greatest ability to maintain prison security and protect the public. Where the correctional authority has determined that an exclusive serving arrangement is appropriate, the Commission should respect that decision. Not only is there vigorous competition to provide such service, but also the Commission should not interfere with such existing private contracts.

Where the correctional authority has chosen to have an exclusive service provider, there is rigorous competition among telecommunications providers, through the use of the Request for Proposal ("RFP") process, to provide the best inmate calling system at the best price. Typically, the authorized local or state correctional authority supervises the bidding process. The agency responsible for preparing the RFP sets forth in great detail the particular requirements for the penal institution. The RFP may include the locations to be served, the type of services requested and provide for certain mandatory conditions that must be met by the service provider.

For example, some of these conditions may include the ability to offer only collect calling services or provide for alternative payment or calling options, the ability to screen phone calls, employ numerous blocking mechanisms and designate only pre-approved numbers to prevent inmates from making direct-dialed calls, access code calls, 800 or 900 calls or calls to certain individuals like judges and witnesses. Prison facilities may also require that phones be monitored for frequent calls to the same number, a sign of possible criminal activity or a scheme to evade calling restrictions like call-forwarding or three-way calling. They may also require a means to identify the call to an end-user as originating from a correctional facility as well as the capability to listen and record all calls made by inmates. Finally, inmate calling systems generally are required to provide detailed, customized reports for the prison facility officials.[17] The use of this comprehensive competitive bidding process ensures that correctional authorities receive the most competitive inmate calling service.

Where such exclusive service arrangements presently exist, any attempted revision of the contractual relationship by the Commission would raise unintended consequences. For example, such contracts envision that the service provider will incur substantial costs in exchange for all of the inmate calling revenue during the period covered by the contract. Any purported modification of the agreement would raise service provider claims for lost revenues and incurred costs. The Commission should not, and may not, go there. Like all federal agencies, the Commission should not

---

[17] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Order on Remand and Notice of Proposed Rulemaking, CC Docket No. 96-128, 17 F.C.C. Rcd. 3248, 3252 (rel. February 21, 2002).

interfere with private contracts. *e.g.*, Atlantic City Electric Company v. Federal Energy Regulatory Commission, 295 F.3d 1, 14 (D.C. Cir. 2002).

CONCLUSION

For the reasons stated above, AT&T respectfully requests that the Commission deny the relief requested in the Wright Petition.

Respectfully submitted,

AT&T Corp.

By: /s/ Martha Lewis Marcus
Lawrence J. Lafaro
Stephen C. Garavito
Martha Lewis Marcus
One AT&T Way
Bedminster, NJ 07921
(908) 532-1841
Its Attorneys

March 10, 2004